

The high rate of tax (6.25% plus local tax) applies to sales of food and drugs that are not designed for human consumption. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

September 24, 2001

Dear Xxxxx:

This letter is in response to your letter dated August 8, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We are owners of an animal hospital in CITY, Illinois.

We recently switched accounting firms and our accountant questioned the way we handle the prescription items. Currently, we pay tax on all incoming prescription items; which are medicines and food. We then resale these items to our clients without charging tax since we already paid it and it is a prescription product. We are charged the regular tax rate, 6.25%. We are not charged the 1% tax rate listed under the human prescription items. Should we be charged only 1%? Also, since the customer is the end user, should we be getting these items in without tax and charging the tax to the customer? We have visited this issue in the past and the IL Department of Revenue representatives have told us we are operating correctly. I called IL Department of Revenue this week since our accountant instructed me to get the answer in writing. The representative told me to write to your department because she wasn't sure of the answers to my questions.

If you have any questions, my work phone number is. Thank you for your assistance.

**DEPARTMENT'S RESPONSE:**

Please find enclosed a copy of the Department's regulation on the reduced tax rate under the Retailers' Occupation Tax Act applicable to food, drugs, medicines and medical appliances, 86 Ill. Adm. Code 130.310. A 1% sales tax rate, plus any applicable local taxes, is applied to food sold for human consumption to be consumed off the premises where sold (other than alcoholic beverages, soft drinks, and food which has been prepared for immediate consumption), drugs, medicines and medical appliances. Please note that the reduced rate is only applicable for food for human consumption and medicines, drugs, and medical appliances intended for human use. See

subsections (b)(1), (c)(1), and (c)(2) of Section 130.310. You are correct that the 6.25% rate plus local tax is the proper tax rate for sales of medicines and food that are not designed for human consumption.

You have asked if your business is correctly paying tax to its suppliers and not charging its customers on tangible personal property it transfers to them. If your business makes retail sales of tangible personal property, such as medicines and food, that are not incident to the providing of veterinary services, it must be registered as a retailer and remitting tax to the Department on those retail sales. In those cases, the business should be purchasing those items without incurring tax by giving its suppliers certificates of resale. See the enclosed copy of 86 Ill. Adm. Code 130.1405.

If your business is transferring tangible personal property incident to sales of services (veterinary services), those transactions may be treated differently. Illinois Retailers' Occupation and Use Taxes do not apply to sales of service that do not involve the transfer of tangible personal property to customers. However, if tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon which tax base the servicemen choose to calculate their tax liability. For your general information we are enclosing copies of 86 Ill. Adm. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax.

Under the Service Occupation Tax Act, businesses providing services (i.e., servicemen) are taxed on tangible personal property transferred as an incident to sales of service. See the enclosed copy of 86 Ill. Adm. Code 140.101. The purchase of tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon which tax base the servicemen choose to calculate their tax liability. The servicemen may calculate their tax base in one of four ways: (1) separately stated selling price of tangible personal property transferred incident to service; (2) 50% of the servicemen's entire bill; (3) Service Occupation Tax on the servicemen's cost price if the servicemen are registered de minimis servicemen; or (4) Use Tax on the servicemen's cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale of service. The tax is then calculated on the separately stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred. See the enclosed copy of 86 Ill. Adm. Code 140.106.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. See the enclosed copy of 86 Ill. Adm. Code 140.109. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). Servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis. Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. See the enclosed copy of 86 Ill. Adm. Code 140.108.

As is apparent from the above explanation, this area of Illinois sales tax laws is complex and can be somewhat confusing. In the situation described in your letter, the business apparently utilizes the fourth method described above, in that it pays Use Tax to its suppliers. We cannot determine if this is the proper method based on the limited information in your letter. For instance, we cannot determine from the facts in your letter if your business qualifies as a de minimis serviceman as described above. If it does qualify as de minimis, please note that the fourth method can only be utilized if the serviceman is not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act as a retailer (i.e., makes no over-the-counter sales).

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

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Associate Counsel

TDC:msk  
Enc.